- Sales - Group W traditionally has had its own stand alone national sales rep organization. An in-house group representing a large number of stations is of benefit to both broadcasters and advertisers. An advertiser can make one stop, rather than many, to achieve the national reach which it may desire for its advertising. The in-house rep will have an indepth knowledge of the stations it represents and a vested interest in obtaining the highest possible volume of advertising at the best possible price for the local stations. Additionally, Group W's single in-house rep serves as a gathering point and repository of important sales information for the entire company. The availability of this information, which is further refined and analyzed through sophisticated computer analysis, improves the sales performance of all of the stations at both the national and local level.

While the present national ownership restrictions create more outlet diversity nationally by the sheer dint of mathematics, the Further Notice properly questions ". . . whether an increase in concentration nationally affects diversity on the local level." Further Notice, ¶96. The answer is clearly no -- "Common ownership of stations in two or more local markets has no effect on the number of outlets and hence no effect on outlet diversity in any local market."[34]

Some have, nonetheless, argued that the phase-out of national ownership limits will inevitably lead to the demise of the all-important local service character of television broadcast service. In Group W's view, nothing could be farther from the truth. As a group owner for more than four decades, Group W's television stations have had a proud record of service and commitment to their individual communities. Far from decreasing the extent of local service, the record is clear that group ownership provides the necessary creative and business basis for greater local service and commitment to the community by each local station.

Moreover, with the advent of cable and new video technologies, any diversity analysis cannot be limited to free, over-the-air television alone. While the developmental nature of some new video technologies may have some relevance from the economic standpoint, it has no relevance from the diversity standpoint. The fact that new video services such as DBS are now available to the public means that they must be taken into full account in any diversity analysis. Whether or not heavily utilized at this point,

---

[34] Joint Economic Analysis, p. 83.

these new services provide clear alternatives for the viewing public.

Nor can the Commission simply rely on the traditional approach to diversity that 51 separate owners is presumptively better than 50 owners. Given the growing competitive posture of paid video services, the Commission must also consider the need for an economically sustainable free, over-the-air ownership structure. Outmoded ownership restrictions which hinder the ability of television groups to organize themselves in the most efficient and productive manner to compete with new video services ultimately could lead to less diversity insofar as the availability of free and universal services are concerned.

III. LOCAL OWNERSHIP LIMITS SHOULD BE RELAXED

Current local ownership rules prohibit the common ownership of two televisions stations, whether VHF or UHF, where there is any Grade B contour overlap between the two stations. As recognized in the Further Notice, the economic and diversity issues involved in the review of this rule are more substantial. Unlike the national ownership rules, issues of direct competition among stations and the diversity of service in a particular market are involved. Furthermore, to the extent that the phase-out of national ownership restrictions is undertaken in reliance on the continued operation of local ownership rules, the Commission obviously cannot then proceed to eliminate those rules.

Group W agrees that the Commission must proceed cautiously. Specifically, we suggest the following incremental changes in local ownership restrictions at this time:

- A change from the Grade B contour to the Grade A contour as the measure of determining prohibited overlap, as proposed by the Commission in the Further Notice.

- An exception to permit Grade A overlap where the two television stations are located in different DMA market areas, such as Washington and Baltimore. In the relatively few cases where this might occur, the more realistic DMA marketplace measure would be utilized in lieu of contour overlap as the measure of separate markets for competitive and diversity purposes.

- The permitted ownership of a UHF and VHF (or two UHF) stations in the top 25 markets.

These modest changes are mandated by the record before the Commission.

A. Prohibited Contour Overlap Should Be Determined On The Basis Of The Grade A, Rather Than The Grade B, Contour

As summarized in the Further Notice, the record already established in this proceeding shows that the Grade B contour is an unnecessarily restrictive measure for purposes of local market ownership restrictions. Further Notice, ¶116. This is further documented by the Joint Economic Analysis. From the standpoint of the local market for delivered video programming, ". . . stations with no Grade A overlap are unlikely to have enough potential viewers in common to be considered significant competitors."[35] And from the standpoint of the local market for advertising, the Joint Economic Analysis demonstrates that:

> ". . . television stations do not significantly compete in the sale of advertising with television stations located outside the DMA. . . . There is no significant competitive effect from a merger of stations in separate markets, and no competitive rationale for prohibiting such mergers."[36]

Similarly, the market for purchasing video programming is a local market which is far smaller than the Grade B contour, both from the standpoint of individual program purchases and network affiliation. The Grade A contour, reflecting a separation between stations from 60 to 90 miles in most cases is a far more accurate measure of the true

---

[35] Joint Economic Analysis, p. 88.

[36] Joint Economic Analysis, pp. 88-89.

local market.[37] The analysis, with respect to diversity concerns is no different. Stations with overlapping Grade B contours alone typically will be located from 100 to 140 miles from each other. With this degree of separation, the extent to which the two stations actually serve the same audience is so limited to be practically meaningless.[38]

B. In Certain Cases, The DMA Market Area, Rather Than The Grade A Contour, Should Be Used As The Measure Of Prohibited Overlap

While the Grade A contour is a more accurate measure of a station's true market and service area than the Grade B contour, it is not a perfect measure. In some cases, while a degree of Grade A contour overlap may exist, the stations nonetheless will have separate and clearly defined market and service areas. In these relatively few cases, rather than the Grade A contour, the industry recognized measure of market area, the Designated Market Area (DMA), should be the appropriate measure of overlap for local ownership rule purposes. Where two stations are located in different DMAs, their common ownership should be allowed notwithstanding the presence of a degree of Grade A overlap.

[37] Joint Economic Analysis, pp. 89-90.

[38] Joint Economic Analysis, pp. 91-92.

The separate Washington, D.C., and Baltimore, MD, DMAs are a good example. The Grade A contour of Group W's Baltimore station, WJZ-TV, overlaps the Grade A contour of each of the Washington, D.C. television stations.[39] However, in terms of competition for audience, advertising and programming, WJZ-TV does not compete against any of the Washington stations to any meaningful degree. Baltimore and Washington are separate DMAs. As the Joint Economic Analysis concludes, ". . . television stations do not significantly compete in the sale of advertising with television stations located outside the DMA."[40] Nor do they compete in the acquisition of programming rights (WJZ-TV is the CBS affiliate in Baltimore, whereas WUSA is the CBS affiliate in Washington) or in the competition for audience. While viewable over the air in parts of Washington, WJZ-TV simply is not viewed to a significant degree in the Washington area.

In the relatively few circumstances such as this,[41] the more appropriate measure of a local market is the marketplace definition of service and coverage area, the

---

[39] As Baltimore and Washington are approximately 45 miles apart, the Grade A contours overlap by approximately 50 miles at their widest point of overlap.

[40] Joint Economic Analysis, p. 88.

[41] Other examples are the separate Boston, MA, and Providence, RI, DMA markets and the separate Detroit, MI, and Toledo, OH, DMA markets.

DMA. Where the stations are located in separate DMAs, this accordingly should be used in lieu of the Grade A contour as the measure of a local market for purposes of applying local ownership restrictions.

C. In The Top 25 Markets, The Common Ownership Of A UHF And VHF Station (Or 2 UHF Stations) Should Be Allowed

The basis for this relaxation is aptly stated in the Joint Economic Analysis:

> "Preservation of adequate competition in local markets is a highly desirable goal. However, the walls erected to protect competition should not be so high that they prevent competitively-neutral mergers, much less those mergers that could yield competitive benefits through greater efficiencies. . . . In some markets, even the Commission's proposed rule based on Grade A contours would prevent mergers that have no adverse effect on competition."[42]

In Group W's opinion, the combined ownership of UHF and VHF facilities in the top 25 markets fall squarely within this demarcation. These are markets in which the existing diversity of over-the-air television stations, together with the rapidly growing universe of cable and new video technologies, can be relied upon to assure the continuation of a diverse and competitive marketplace. For example, the following table digested from the Joint Economic Analysis (Table 5, p. 32) shows the presently unconcentrated nature

---

[42] Joint Economic Analysis, p. 87.

that exists in these larger markets. This table shows the existing HHI levels for three selected top 25 markets (New York, DMA #1; Cleveland, DMA #13; and Portland, DMA #25) based either on local sales alone or overall capacity for various combinations of product markets.

HHIs FOR ALTERNATIVE DMA ADVERTISING PRODUCT "MARKETS," 1994

Product "Market"	DMA	Local Sales	Capacity
Video, radio & newspaper	New York*	722	703
	Cleveland	1,370	1,250
	Portland, OR	2,244	1,839
Video, radio, newspaper, yellow pages & outdoor	New York*	889	758
	Cleveland	1,275	1,106
	Portland, OR	1,791	1,485
Video, radio, newspaper, yellow pages, outdoor, direct mail & miscellaneous	New York*	393	284
	Cleveland	565	418
	Portland, OR	797	564

*1993 revenue

Based on the more accurate capacity measure of concentration and considering the broader advertising marketplace measures, the entire range of top 25 markets is unconcentrated. However, even if measured on the more limited basis of only video, radio and newspaper, the relatively unconcentrated nature of these large markets is more than sufficient to permit the common ownership of more than one over-the-air video facility. Only in the 25th market (Portland) does the HHI trend start to exceed 1,800.

We suggest that only the common ownership of a VHF and UHF (or 2 UHF) facilities be allowed for two reasons. First, notwithstanding the significant competitive growth of UHF over the past decade, competitive and coverage differences still remain. Limiting the second permitted station in the market to a UHF station is, therefore, a more cautious approach which should further the competitive development of UHF. Second, this approach eliminates the need for marketplace "floors" or other complicated mechanisms (Further Notice, ¶123) to ensure the preservation of a diverse local marketplace.

IV. THE RADIO-TELEVISION CROSS-OWNERSHIP RULES SHOULD BE PROMPTLY REPEALED

The "one-to-a-market rule" generally prohibits the common ownership of a radio and television station in the same local market. Depending on the extent to which the Commission finds that radio and television stations compete in the local market, the Further Notice proposes either to repeal the restriction completely or adopt a modified version which essentially would codify the existing "look favorably" waiver standard. Under this latter alternative, the common ownership of AM-TV, FM-TV, or AM-FM-TV stations would be permitted ". . . in those markets that have a sufficient number of remaining alternative suppliers/outlets . . . to insure sufficient diversity and workable competition." Further Notice, ¶132.

This should not be a simple "either-or" question. While radio and television are part of the larger advertising marketplace, the limited extent to which they compete directly in the local marketplace does not justify continuation of any one-to-a-market restrictions. The continuation of any cross-market restrictions would only serve to continue artificial entry barriers and discriminate against combined radio-TV broadcasters, as they seek to compete against radio duopolies, whose owners are not subject to one-to-a-market requirements.

The modified form of the one-to-a-market rule which is proposed (Further Notice, ¶132) completely ignores the Commission's 1991 radio rule modifications allowing the ownership of up to two same-service radio stations in the same market.[43] When the top 25 market "look favorably" waiver policy was adopted in 1989, the Commission's radio market rules permitted the ownership of only one same-service radio station in the same market. The subsequent adoption of new radio duopoly standards in 1992 should have been routinely incorporated into the one-to-a-market rules

[43] Revision of Radio Rules and Policies, 7 FCC Rcd. 2755 (1992), Order on Reconsideration, 7 FCC Rcd. 6387 (1992), Order on Further Reconsideration, 9 FCC Rcd. 7183 (1994).

"look favorably" waiver policy. However, the issue was overlooked by the Commission in its initial Report and Order. On reconsideration, given the pendency of this proceeding, the Commission elected to apply a more rigorous waiver policy pending the completion of this proceeding.[44] While this cautious approach may have been appropriate as an interim measure, the permanent maintenance of the distinction can only be justified on the basis of the law of unintended consequences.

If any modified version of one-to-a-market rule is retained, the Commission should at least apply that modified rule based on the radio ownership rules currently in effect. Whatever one rule permits, the other rule should not take away. If two same-service radio stations are automatically permissible under the radio ownership rules, that should be the number of radio stations which is taken into account for purposes of any restrictions governing the ownership of radio and television stations in the same market.

The illogic of the current rule should be obvious on its face. The ownership by a television broadcaster of two radio stations in the market is automatically permissible so long as they are different service stations. However, the ownership of two same-service stations, regardless of their competitive posture, is prohibited absent a waiver. Put

---

[44] Revision of Radio Rules and Policies, supra, 7 FCC Rcd. at 6394, fn. 40.

into more specific terms, a strong AM/FM combination satisfies the rule, whereas a weak AM/AM or FM/FM combination is presumptively not in the public interest. A more capricious distinction is hard to imagine.

Moreover, both from the policy and administrative standpoint, it makes no sense to have a separate and time consuming one-to-a-market waiver process for a second same-service radio station that would otherwise be automatically permissible under the radio ownership rules. From the policy standpoint, as hereinafter discussed, the incremental economic and diversity consequences of the second radio station are extremely minor. From the administrative standpoint, the time and effort necessary to process full waiver requests is not the most productive use of the Commission's resources.[45/]

And from the standpoint of the combined radio-TV broadcaster, the different standard is arbitrary and discriminatory. Rather, a combined radio and television station operator, such as Group W, should stand on a completely equal footing vis-a-vis a radio-only station operator in the ability to take advantage of the expanded

---

[45/] All requests acted upon to date for one-to-a-market waivers involving the acquisition of a second same-service radio station have been granted. See, e.g., Secret Communications Limited Partnership, FCC 94-154, released April 19, 1995. This further suggests that the waiver process is unnecessary.

radio ownership opportunities available under the Commission's duopoly radio rules.[46]

A. The Market For Video Delivered Programming Will Not Be Adversely Affected

As the Further Notice tentatively concludes, ". . . since television and radio stations do not operate in the same relevant markets for delivered programming, allowing cross-ownership between them in a local market would not appear to harm competition in either." Further Notice, ¶125. The Joint Economic Analysis, expressing concern that the market focus may be too narrow, nonetheless finds that the conclusion is correct, even in a broader market context. The inclusion of non-video program services and other leisure time activities is of no consequence because:

> ". . . there is no apparent reason to believe that any one of them -- such as radio alone, or newspapers alone -- plays a unique role in constraining video programming quality. Thus, even in a broader market, cross-ownership of television and radio would not be likely to raise concerns relating to the quality of television programming."[47]

---

[46] Given the substantially greater time and effort involved in obtaining a waiver, the present waiver approach while it ultimately may permit acquisition of the second station does not place the parties on an equal footing.

[47] Joint Economic Analysis, p. 95.

B. **The Market For Advertising Will Not Be Adversely Affected**

This issue must be examined on two levels. First, in the broader sense, there is a competitive relationship between radio and television advertising. As with other advertising media, a degree of substitutability exists which must be taken into account.[48] From this standpoint, however, even viewing the two media as direct competitors, the economic consequences of combined radio-television ownership are minor. The following table reproduced from the Joint Economic Analysis (Table 11, p. 98) calculates the increase in HHI concentration in five selected markets due to the acquisition by a TV station of one AM/FM station and a second AM/FM station. The latter acquisition represents the highest number of radio station permissible under the current radio duopoly rules.[49]

---

[48] Joint Economic Analysis, pp. 18-37.

[49] These calculations are based on the advertising revenues of the median AM and median FM station in the market being attributed to the median television station in the DMA. The second AM/FM figures in the final column then represent the addition of the revenues of the next largest AM and FM station in the market. See Joint Economic Analysis, pp. 96-97.

HHIs FOR HYPOTHETICAL RADIO-TELEVISION COMBINATIONS IN ALTERNATIVE DMA ADVERTISING PRODUCT "MARKETS," 1994

Product "Market"	DMA	CAPACITY		
		Pre-Merger	TV-AM/FM Merger	TV-2 AM/ 2 FM Merger
Video, radio, & newspaper	New York*	703	707	710
	Cleveland	1,250	1,261	1,270
	Portland, OR	1,839	1,871	1,909
	Richmond	1,924	2,037	2,081
	Amarillo	2,505	2,585	2,625
Video, radio, newspaper, outdoor, & yellow pages	New York*	758	760	762
	Cleveland	1,106	1,112	1,118
	Portland, OR	1,485	1,505	1,529
	Richmond	1,519	1,589	1,617
	Amarillo	1,722	1,771	1,795
Video, radio, newspaper, outdoor, yellow pages, direct mail, & miscellaneous	New York*	284	285	286
	Cleveland	418	421	423
	Portland, OR	564	572	581
	Richmond	583	610	621
	Amarillo	632	650	660

*1993 revenue

As is readily apparent, the increase in HHI concentration due either to the addition of the first or second AM/FM station is extremely minor. In New York, for example, considering only video, radio and newspaper as the relevant product market, there is only a slight four point increase in HHI concentration (from 703 to 707) due to the first AM/FM merger and an even slighter three point HHI increase (707 to 710) due to the second AM/FM station merger.

Regardless of the size of market or definition of product market, the relative degree of change is roughly similar. For all possibilities considered, the greatest increase in HHI is projected to occur in the Richmond market measured on the basis of the video, radio and newspaper market alone. Even there, however, the HHI increases are not significant. For the first AM/FM acquisition, the HHI increase is 113 and for the second AM/FM acquisition, 44 HHI points. These extremely minor increases are certainly no reason to impose special restrictions with respect to the acquisition of either a first or second AM/FM station.[50/]

National advertising marketplace considerations are no different. While the Commission has tentatively concluded that radio does not compete with video in selling national advertising, even if it is assumed otherwise, the increases in HHI concentration are insignificant.[51/]

[50/] While the HHI figure for certain combinations of geographical and product market is substantial, this is not the relevant consideration insofar as the one-to-a-market rule is concerned. The sole issue is the degree of increase, not the starting premerger HHI of the television station. Moreover, even if the Commission were to conclude otherwise and limit its consideration to the most limited product market (video, radio and newspaper), this would provide no basis to restrict radio-television combinations in the top 25 markets.

[51/] See Joint Economic Analysis, pp. 99-101.

From the standpoint of specific marketplace competitive conditions, the Commission must also consider that radio and television are not directly competitive media. While a significant degree of substitutability does exist as outlined in the Joint Economic Analysis, significant differences also do exist in the respective usage and desirability of radio and television advertising by particular types of advertisers. For example, it has been Group W's experience that the overall substitutability of radio and television advertising is constrained by the following factors:

- <u>Price</u> - There are a significant number of radio advertisers that choose radio for the simple reason that they cannot afford television advertising. Radio costs substantially less and is a viable advertising medium for myriad advertisers for whom television is beyond their budget.

- <u>Audience Reach</u> - There are many advertisers that simply do not need the broad reach of a television station. Television is generally sold on an ADI basis, while radio is sold on the smaller Metro basis. Metro audience figures tend to be far less than ADI data. Therefore, an advertiser within the radio Metro area can make a much more efficient buy on radio than they can on television. They simply do not need the bulk, and the associated costs, of the television audience.

- Demographic Targeting - Radio is a much more targeted medium in its ability to pinpoint and reach specific demographic groups. There are dozens of radio formats, each seeking niche audiences that may be attractive to certain advertisers. The need of these advertisers to target these specific demos brings them to radio and causes them to reject the broad reach of television.

Perhaps the best evidence of these differences is Group W's experience in the operation of combined radio/TV stations. While we have found it practical and feasible to combined several areas of station operation such as administrative support, technical operation and some programming activities, we have found it impossible to combine sales departments because of the differing nature and customer base of the radio and television advertising marketplaces.

C. The Video Program Product Market Will Not Be Adversely Affected

As the markets for video programming and radio programming are distinctly different, the Further Notice tentatively concludes that there is no reason to expect the repeal of the one-to-a-market rule will harm competition in either of these supply markets. Further Notice, ¶127. This is solidly supported by the Joint Economic Analysis which concludes that the "[c]ross-ownership of television and radio stations has no affect on the market for video program rights . . . ."[52]

D. Diversity Of Program Service Will Be Enhanced

As with the diversity analysis governing other ownership rules, the Commission cannot review the one-to-a-market rule on the basis of the simplistic equation that 51 independently owned broadcast stations is presumptively preferable to 50. First, the analysis take into account the presence of cable and new video technology delivered services, including cable and satellite delivered audio services. As noted in the Further Notice, even in the smaller markets, a significant number of broadcast and non-broadcast services are now generally available. Further

[52] Joint Economic Analysis, p. 101.

Notice, ¶129. For purposes of analysis, the Joint Economic Analysis relates the need for service diversity to the need for an unconcentrated marketplace. Finding diversity concerns to be, if anything, less problematic than the economic effects of combined radio/television ownership, it concludes that ". . . a radio-television combination that passes muster under the Clayton Act should also pass muster under any reasonable diversity standard."[53]

Second, the operational efficiencies and resulting benefits to the public of combined radio-television operation must also be considered. On this score, Group W has substantial first-hand experience through the long time operation of radio and television stations in several major markets. In terms of service provided to the public, particularly in the important area of news and public affairs programming, the benefits can be substantial. For example, consider the following two examples:

- In 1992, Group W combined the radio and television operations of its two Boston stations (WBZ-AM and WBZ-TV) under one general manager. As a result of being able to share news and programming resources, the combination resulted in the substantial increase in the amount of radio news and public affairs programming. The combined

[53] Joint Economic Analysis, pp. 101-102.

resources of the WBZ radio and television news department allowed WBZ radio to more than double the news minutes available on the radio station each day. Sharing of programming resources also resulted in an increase in issue-oriented talk programming, rather than music and lighter talk on WBZ radio.

- Earlier this year, Group W acquired an AM/FM combo in San Francisco, where it has operated KPIX-TV for over 30 years. Due to the existing news and public affairs resources of KPIX-TV, Group W was able immediately to institute all-news radio service on its new AM/FM station (now KPIX and KPIX-FM), thereby providing an additional all-news radio service in the San Francisco Bay area. By contrast, in another market where Group W acquired a stand-alone radio station several years ago, the development and institution of an all-news radio service was substantially more difficult and time consuming.

Overall, both from the standpoint of operational efficiencies and the potential for adverse economic or diversity effects, the record is clear. In this day and age of rapidly expanding video and audio services from a wide variety of technologies, the combined ownership of radio and television stations, subject only to whatever ownership rules govern each service, is in the public interest.

CONCLUSION

Viewed overall, this proceeding should not be difficult for the Commission to resolve. In response to the Further Notice, Group W and others have provided the Commission with substantial economic and marketplace analysis. This record conclusively demonstrates that the following measures may be undertaken by the Commission with no adverse affect on marketplace economic and diversity concerns:

- The phase-out of all national ownership restrictions. The cap should be immediately raised to 50% and 12 station limit repealed. Thereafter, over a five-year period, automatic annual increases of 10% should be adopted to complete the phaseout by the year 2000.

- Carefully crafted modifications to the local ownership rules to permit:

-- Utilization of the Grade A contour as the standard for determining overlap.

-- The alternative use of the DMA market definition for measuring local market ownership prohibitions in certain limited cases.

-- The ownership of a UHF and VHF (or two UHF) stations in the top 25 markets.

- The immediate repeal of all radio-television cross-ownership restrictions.

These actions, in Group W's view, are essential to the future of free, over-the-air television in the rapidly expanding universe of nationally and locally delivered video services via cable and the expanding alphabet of new video and audio services. To do otherwise will unfairly hobble over-the-air broadcasters as they seek to meet the growing level of competition wrought by these new services.

Respectfully submitted,

WESTINGHOUSE BROADCASTING COMPANY (GROUP W)

Martin P. Messinger

Martin P. Messinger
Vice President & General Counsel
Westinghouse Broadcasting Company
200 Park Avenue, 37th Floor
New York, New York 10166
(212) 885-2680

Stephen A. Hildebrandt

Stephen A. Hildebrandt
Chief Counsel
Westinghouse Broadcasting Company
1025 Connecticut Avenue, N.W., #506
Washington, D.C. 20036
(202) 857-5155

Ramsey L. Woodworth

Ramsey L. Woodworth
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006
(202) 457-7874

Its Counsel

May 17, 1995